



Commonwealth of Virginia
Virginia Information Technologies Agency

SOFTWARE

Optional Use Contract

Date: November 17, 2004

Contract #: VA-040901-SA

Authorized User: State Agencies, Institutions, and other Public Bodies
as defined in the VPPA

Contractor: System Automation Corporation
4041 Powder Mill Road
Suite 600
Beltsville, MD 20705

FIN: 52-0889870

Contact Person: Sol Horwitz
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Term: October 5, 2004 – October 4, 2007

Payment: Net 30 days

For Additional Information, Please Contact:

Contract Information:
Virginia Information Technologies Agency
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NOTES: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this Contract.

For updates, please visit our Website at <http://www.vita.virginia.gov/procurement/contracts.cfm>

VIRGINIA INFORMATION TECHNOLOGIES AGENCY (VITA): Prior review and approval by VITA for purchases in excess of \$100,000.00 is required for State Agencies and Institutions only.

CONTRACT # VA-040901-SA
CONTRACT CHANGE LOG

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**MASTER AGREEMENT
VA-040901-SA
BETWEEN
THE COMMONWEALTH OF VIRGINIA
AND
SYSTEM AUTOMATION CORPORATION**

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**MASTER AGREEMENT
VA-040901-SA
BETWEEN
THE COMMONWEALTH OF VIRGINIA
AND
SYSTEM AUTOMATION CORPORATION**

1. SCOPE OF AGREEMENT

This Master agreement (the "Agreement" or "Contract") specifies the contractual terms and conditions by which the Commonwealth of Virginia, as Licensee, and hereinafter referred to as "Commonwealth" or "State" or "VITA" (Virginia Information Technologies Agency) will acquire software ("Software" and "Software product") and services ("Services") as identified herein, from the SYSTEM AUTOMATION CORPORATION (the "Contractor" or "SA"), a business incorporated in the District of Columbia, F.E.I.N. 52-0889870, having its principal place of business at 4041 Powder Mill Road, Suite 520, Calverton, MD 20705 on the behalf of all State Agencies, Institutions, and other public bodies as defined in Section 2.2-4301 entitled *Definitions* and Section 2.2-4304 of the Virginia Public Procurement Act (VPPA), as amended, hereinafter referred to as "Authorized Users". All Software and Services shall be supplied in conformance with the terms and conditions of this Agreement and any duly executed Attachment, Order, or Schedule referencing this Agreement.

Upon award, eVA Requisitions for all Software and Services products shall be placed directly with VITA by Authorized Users. eVA Orders for Software and Services for any Commonwealth location may be placed against this Agreement by VITA that are mutually agreed to by both parties.

The scope of Licensee shall include all state agencies, institutions, cities, towns, counties or any other public body, as defined in Section 2.2-4301 entitled *Definitions* and Section 2.2-4304 of the Virginia Public Procurement Act (VPPA).

This enterprise software license shall apply to the entire Commonwealth of Virginia and include all public bodies as defined above.

Attachment A, attached hereto and incorporated herein, identifies specific Software and Services descriptions and pricing associated with SYSTEM AUTOMATION CORPORATION provided for under this Agreement.

2. INTERPRETATION OF AGREEMENT

As used in this Agreement, Contractor Software and Services shall be all items listed on Attachment "A", hereto. "Software" and "Software product" shall include all related software materials and documentation, whether in machine-readable or printed form. "Services" are all technical services, which may include, but not be limited to: installation, warranty/maintenance support, programming, trouble-shooting, consulting and training.

The documents comprising this Master Agreement, and their order of precedence in case of conflict, are: (1) this document, consisting of Terms and Conditions labeled 1 through 70,

Attachment A, entitled "*Pricing And Contract Usage Instructions*", Attachment B, entitled "*Sample Statement Of Work (SOW)*"; (2) all executed Orders and Attachments referencing this Agreement; and (3) the Contractor's Software "Product Use Rights", which as used herein means only those clauses that describe the permitted usage of the Software Product specified on each individual Software License Agreement, which is contained in, or provided with, each Software Product.

The foregoing documents represent the complete and final agreement of the parties with respect to the subject matter of this Agreement. No other written documents regardless of form or content shall be executed by any agency or institution for products or services acquired under this Contract unless signed by the VITA Contracting Officer, or his alternate as designated by the CIO.

IN NO EVENT IS THE SOFTWARE LICENSE AGREEMENT CONTAINED IN EACH SOFTWARE PRODUCT EXPECTED TO BE EXECUTED OR HAVE ANY OTHER MEANING THAN FOR ITS SPECIFIC PRODUCT USE RIGHTS. FOR ANY EVENT WHEREIN THE PRODUCT USE RIGHTS CONFLICT WITH THIS AGREEMENT, THIS AGREEMENT SHALL PREVAIL.

THE UNIFORM COMPUTER INFORMATION TRANSACTION ACT (UCITA) SHALL NOT APPLY TO THIS AGREEMENT. For the convenience of the parties, there may be an individual Software License Agreement contained in each Software Product Ordered and shipped under this Agreement. Both parties agree that the individual Software License Agreement specific to each Software Product will be used only to identify the Product Use Rights and is not valid for any other purpose. Without limiting the foregoing, the Contractor, as the Manufacturer of the Software Product hereby warrants that no such individual Software License Agreement is deemed to be executed by any action of any Authorized User of this Agreement. The Contractor hereby represents that the individual Software License Agreement does not purport to create conflicts with this Agreement. It is the intent of the parties that all rights and obligations are identified in this Agreement and the Product Use Rights.

If any term or condition of this Agreement is found to be illegal or unenforceable, it shall be severed, and the validity of the remaining terms and conditions shall not be affected.

Nothing in this Agreement shall be construed as an express or implied waiver of the Commonwealth's sovereign or Eleventh Amendment immunity, or as a pledge of its full faith and credit.

3. HEADINGS NOT CONTROLLING

Headings used in this Contract are for reference purposes only and shall not be considered in construing this Agreement.

4. APPLICABLE LAWS AND COURTS

This solicitation and any resulting Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts

of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

5. ANTI-DISCRIMINATION

By submitting their bids, bidders certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §2.2-4311 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that Contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E).

In every Contract over \$10,000 the provisions in A. and B. below apply:

A. During the performance of this Contract, the Contractor agrees as follows:

- 1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
- 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

B. The Contractor will include the provisions of A. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

6. ETHICS IN PUBLIC CONTRACTING

By submitting their proposals, offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

7. IMMIGRATION REFORM AND CONTROL ACT OF 1986

By submitting their proposals, offerors certify that they do not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

8. DEBARMENT STATUS

By submitting their proposals, offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on Contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

9. ANTITRUST

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said Contract.

10. PAYMENT

A. To Prime Contractor:

- 1) Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices shall show the state Contract number and/or purchase order number; social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- 2) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- 3) All goods or services provided under this Contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed.

- 4) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- 5) **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges that are not in dispute (*Code of Virginia*, § 2.2-4363).

B. To Subcontractors:

- 1) A Contractor awarded a Contract under this solicitation is hereby obligated:
 - (a) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; or
 - (b) To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
 - (c) The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (b) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

11. TESTING AND INSPECTION/LATENT DEFECTS

The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to specifications. All Products are subject to inspection and test. Products that do not meet specifications may be rejected. Failure to reject, however, does not relieve the Contractor of liability for latent or hidden defects subsequently revealed when goods are used after acceptance has occurred. If latent defects are found at any time during the term of this Agreement, the Contractor shall repair or replace the defective products.

This remedy shall be in addition to any other remedies or obligations under this Agreement or provided by law.

12. ASSIGNMENT OF CONTRACT

To the fullest extent permitted by law, the parties agree that Contractor's rights under this Contract shall not be assignable, in whole or in part, to any other party without the Commonwealth's written consent, and that any purported assignment or transfer without such consent shall be null and void. If any law limits the right of the parties to prohibit assignment or nonconsensual assignments, the effective date of the assignment shall be as follows. The Contractor shall give the VITA Supply Chain Management office prompt written notice of the assignment, signed by authorized representatives of both the Contractor and the assignee. This written notice shall be on VITA's "Assignment Notice / Payment Instruction" form and shall provide all information requested on that form. Copies of the form may be obtained from the Contracts Manager, VITA. Upon VITA's acknowledgment of receipt of the properly executed form, the Assignee shall notify the Controller, VITA of the assignment and shall supply the Controller, with a copy of the properly executed form. Any payments made prior to receipt of such notification and form shall not be covered by this assignment.

In the event the Commonwealth receives any notice from a third party claiming to be an assignee of any rights of the Contractor under this Contract, Contractor agrees that payment or other performance in respect of those rights shall not be due until at least thirty days after VITA's receipt of the notice required by the above paragraph or receipt of a similarly executed notice confirming the absence or revocation of the purported assignment. The VITA Supply Chain Management office shall promptly notify the Contractor of any assignment notice it receives.

13. CONTRACTOR COMMITMENTS, WARRANTIES AND REPRESENTATIONS

Any commitment made by Contractor within the scope of this Contract shall be binding upon Contractor. For the purposes of this Contract, a commitment by the Contractor includes:

- a. Prices and options committed to remain in force over a specified period(s) of time;
- b. Any written warranty or representation made by the Contractor in this solicitation as to software performance, or other physical design or functional characteristics of that which is offered.

14. EXCLUSIVITY OF TERMS AND CONDITIONS

The Virginia Information Technologies Agency (VITA) will not sign or execute any additional contract, license or other agreement, including shrink-wrap Software, containing contractual terms and conditions as a result of this procurement. Any documents signed by persons other than the Contracts Manager, SCM, shall have no validity and the attached Terms and Conditions shall supersede all such agreements.

15. CHANGES/MODIFICATIONS

This Contract may be modified in accordance with 2.2-4309 of the Code of Virginia. Such modifications may only be made by the representatives noted below. No modification to this

Contract shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing.

Any Contract issued on a firm fixed price basis may not be increased more than twenty five percent (25%) of \$50,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or his authorized designee.

Authorized Representatives:

COMMONWEALTH OF VIRGINIA:

Contracts Manager, SCM
Virginia Information Technologies Agency
Richmond Plaza Bldg., Lobby Level
110 South 7th Street
Richmond, VA 23219-3931

CONTRACTOR:

SYSTEM AUTOMATION CORPORATION
ATTN: Sol Horwitz, Director of Contracts
4041 Powder Mill Road, Suite 520
Calverton, MD 20705

THE ISSUANCE OF INFORMATION, ADVICE, APPROVALS, OR INSTRUCTIONS BY THE COMMONWEALTH'S OR AUTHORIZED USER'S TECHNICAL OR MANAGEMENT PERSONNEL OR OTHER REPRESENTATIVES SHALL BE DEEMED EXPRESSIONS OF PERSONAL OPINIONS ONLY AND SHALL NOT AFFECT THE CONTRACTOR'S AND COMMONWEALTH'S RIGHTS AND OBLIGATIONS HEREUNDER UNLESS THE SAME IS IN WRITING SIGNED BY THE PARTIES AND EXPRESSLY STATES THAT IT CONSTITUTES A CHANGE TO THE CONTRACT ORDER.

16. TERM

eVA Direct Orders ("Orders" or "DOs") may be written by VITA against this Agreement for a period of three (3) years beginning on the date of its final execution by both parties, and for any renewal term thereafter. The Agreement shall remain in full force and effect beyond the Agreement term period until the last item delivered completes its Warranty period and/or any Service contracted hereunder has been fully accepted. Subject to the mutual written consent of both parties, this Agreement may be extended for additional one (1) year annual periods after the expiration of the initial three (3) year period. The Commonwealth will issue a written notification to the Contractor stating the extension period, 30 days prior to the expiration of any current Term.

17. ORDERS

As all Software will be hosted by VITA, VITA shall retain the sole and exclusive authority to order all Software and Service Products delineated herein on behalf of all Authorized Users. Authorized Users requiring the Products delineated herein may submit a requisition to VITA as follows:

- a. The Authorized User will first provide a Statement of Work ("SOW") to the Contractor for completion

- b. Contractor will acknowledge receipt of SOW to the Authorized User within two (2) calendar days and provide the Authorized User with a total cost for all Products within seven (7) calendar days after receipt of a SOW
- c. Following the receipt of a completed SOW from Contractor, the Authorized User will send VITA an eVA requisition (<http://www.eva.state.va.us>), and attach the SOW
- d. VITA will review the eVA requisition and attached SOW for approval
- e. Following review and approval, VITA will process the eVA requisition and issue an eVA Direct Order ("DO") to the Contractor with the attached SOW.
- f. Upon receipt of a valid DO issued by VITA, Contractor shall process the DO and return a confirmation Receipt to identify and verify that:
 - 1) The received Order was received, is technically correct, accurate, and complete, with SOW attached, and identifying the Product to be acquired, price, and Required Delivery Date ("RDD") for each Product.
 - 2) Contractor may request clarification and/or a change to the RDD should product availability or delivery be an issue, and any other applicable administrative or technical information necessary to deliver the Product(s) requested on the Order by the RDD.
- g. To be valid, any eVA DO must cite this Agreement #VA-040901-SA, and be approved by an Ordering Officer authorized by VITA to place Orders binding the Commonwealth contractually under this Agreement, as delineated herein under the section entitled "ORDERING OFFICERS".
- h. Contractor shall request a clarification for any DO that is not complete, clear or fully understood.

VITA's intent is to use eVA, the Commonwealth of Virginia's total e-procurement internet portal solution (<http://www.eva.state.va.us/>) as the sole ordering method; which may be transmitted via email, fax, or any other delivery means.

This ordering authority is limited to issuing orders for the Product Software / Services available under this Agreement.

Under no circumstances shall an Ordering Officer, or any Authorized User, have the authority to modify this Agreement. Any additional or conflicting terms and conditions contained in any Order are agreed to be excluded and of no effect upon this Agreement.

Contractor acknowledges that the forgoing is not limited to precluding the Commonwealth from issuing Orders against subject Contract as it so chooses. Both parties understand and agree that the Contractor shall only be obligated to fulfill Orders that correctly identify Product, price and all other integral aspects of the Product.

For any instance whereby the Contractor has identified any Authorized User in a Contract Dispute as evidenced in writing from the Contractor in compliance with the paragraph entitled "Contracts Disputes" herein, the Contractor may not be obligated to continue to fill new Orders for that specific Authorized User, until resolution.

18. ORDERING OFFICERS

VITA appoints the following authorized Ordering Officers: Carmen Holmes and Joyce Washington. The Ordering Officer(s) authority is limited to ordering the Products identified herein, via written eVA Order(s) that reference this Contract, and does not include the ability to add any additional Software or Services not set forth herein, or to change or modify any prices, terms and or conditions agreed upon by the parties hereto. All changes to this Contract must be incorporated into a formal modification to this Contract by the parties identified in the section herein, entitled "MODIFICATIONS".

Contractor is hereby notified that the Commonwealth will only make payment only against valid Orders executed by any of the foregoing authorized Ordering Officers, and a confirmed receipt by the Contractor. Contractor shall be advised in writing by the VITA Contracting Officer, or their appointed designee, of any change in the identity of Ordering Officers.

19. BILLING FORMAT

Magnetic tape in IBM EBCDIC is the preferred electronic format. A different electronic format may be acceptable, such as ftp, e-mail, CD-ROM provided that it includes the customer number and a hard copy bill that summarizes and reflects the totals in the electronic copy.

20. INVOICES

All invoices shall be rendered promptly to VITA after all Products covered by the invoice have been accepted. All payments under this Agreement shall be monthly in arrears. No invoice may include any costs other than those identified in the Agreement or the individual TSO referencing this Contract. Invoices shall provide at a minimum:

- a. Type and description of the Service;
- b. Customer number
- c. Recurring monthly charges for each Service;
- d. Partial monthly charges (if any)
- e. This Contract Number/TSO Number, and;
- f. Contractor's Federal Identification Number (FIN)

Payment for Services that extend beyond the annual Contract period shall be prorated at 1/12 of the basic annual charges for each calendar month.

21. TAXES

Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request, and can be obtained online at <http://www.tax.state.va.us/>. Deliveries against this Contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

22. USE OF BRAND NAMES

Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict offerors to the specific brand, make or manufacturer named, but

conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The offeror is responsible specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the offeror clearly indicates in its proposal that the product offered is an equal product, such proposal will be considered to offer the brand name product referenced in the solicitation.

23. FAILURE TO DELIVER

In the event the Contractor fails for any reason to deliver in a timely manner or according to Contract terms the items set forth in the Schedule, the Commonwealth, at its own discretion, may give Contractor oral or written notice of such breach. Once notice by State is sent or given, State may immediately procure the items from another source. In no event shall State be held to pay Contractor any costs incurred by Contractor, including but not limited to ordering, marketing, manufacturing, or delivering the item(s) which are subject of the State's notice of breach. This remedy is in addition to and not in lieu of any other remedy the Commonwealth may have under this agreement and the laws of the Commonwealth of Virginia.

24. PRODUCT CONDITION

All products to be supplied by Contractor shall be new.

25. SOFTWARE SPECIFICATION

Each software Product shall conform to all specifications published or provided by the Contractor or developer in all respects, including, but not limited to, operating performance, timing characteristics, sizing and compatibility.

26. DELIVERY DATE

Contractor shall provide Contract deliverables, Software or Services, by the latest delivery date specified in any executed Attachment, Order, or SOW referencing the Agreement, or within thirty (30) days After Receipt of the Order (ARO) if no date is specified. If delivery is not completed within the time specified, the Commonwealth may cancel the Agreement or any individual Order without further obligation. The Commonwealth may postpone any delivery date by notifying the Contractor for any Product that has not left the Contractor's distribution facility. However, the delivery date shall not be postponed more than a total of thirty (30) days. Neither the Contractor nor the Commonwealth, or any Authorized User, shall be responsible for delays resulting from acts of God, riots, acts of war, terrorism, fire, earthquakes, epidemics, or natural disasters.

27. INSTALLATION RESPONSIBILITY

Except where otherwise expressly provided, "delivery" includes installation and delivery shall not be complete until, Contractor completes installation of all Products, including, without limitation, shipping FOB destination, all unpacking, positioning and connection of such Products with internal utility services, ready for Acceptance Testing. All equipment installations shall comply with building and facilities standards established by the Commonwealth.

28. SITE PREPARATION

At least thirty (30) days prior to the scheduled delivery date, Contractor shall provide the Commonwealth with any environmental specifications necessary to ensure the proper and efficient operation of all Products. All such specifications shall be in writing.

The Commonwealth shall prepare the site at its own expense and in accordance with all such environmental specifications.

Ten (10) days prior to scheduled delivery date, Contractor shall, if it deems necessary, inspect the site and notify the Commonwealth in writing of any environmental inadequacies. In the absence of notification to the contrary, the Commonwealth's environment shall be deemed acceptable to the Contractor.

Any delay or additional site preparation expense caused in whole or in part by erroneous or incomplete environmental specifications shall be the Contractor's responsibility.

29. COMMENCEMENT OF ACCEPTANCE TESTING

The Products shall be considered ready for testing when the Contractor provides the Commonwealth with the documentation of a successful system audit or diagnostic test performed at the site which demonstrates, to the satisfaction of the Commonwealth, that all Products meet the minimum design capabilities specified by Contractor. If the Contractor certifies that the Products are ready to begin acceptance testing prior to the scheduled delivery date, the Commonwealth, at its option, may elect to test the Products and change the delivery date accordingly.

30. REQUIRED PERFORMANCE LEVEL

To qualify for acceptance, all Products must concurrently perform in accordance with the technical specifications and functional descriptions, as contained or referenced in this Agreement, at an average effectiveness level of 98% or more, calculated over a period of ten (10) consecutive days. The Commonwealth shall not pay any charges, either beforehand or retroactively, associated with the Contractor's requirement to achieve this performance level. If any Product does not meet the standard of performance during the initial ten (10) consecutive days, then the acceptance period shall continue on a day-to-day basis until all Products concurrently meet the standard of performance for ten (10) consecutive days.

Should it be necessary, the Commonwealth may delay the start of the acceptance period, but such a delay shall not exceed thirty (30) consecutive days.

31. ACCEPTANCE

The Products shall be deemed accepted on the first day after successful completion of the acceptance period. Upon request, the Commonwealth shall provide written confirmation of acceptance. If the standard of performance has not been met after thirty (30) calendar days have elapsed from the start of the acceptance period, the Commonwealth may require a replacement to be provided or may avail itself of the remedies for breach

32. RECORDS

The Commonwealth shall maintain appropriate daily records documenting performance during the acceptance period and such records shall be conclusive for purposes of determining acceptance.

33. TRANSPORTATION AND PACKAGING

Contractor certifies and warrants that prices offered are FOB destination and include only the actual freight rate costs at the lowest and best rate and is based upon the actual weight of the goods to be shipped. Except as otherwise specified herein, standard commercial packaging, packing and shipping containers shall be used. All shipping containers shall be legibly marked or labeled on the outside with purchase order number, commodity description, and quantity.

34. INSURANCE

By signing and submitting a bid or proposal under this solicitation, the bidder or offeror certifies that if awarded the Contract, it will have the following insurance coverages at the time the Contract is awarded. For construction Contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverages during the entire term of the Contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

INSURANCE COVERAGES AND LIMITS REQUIRED:

- a. Worker's Compensation - Statutory requirements and benefits.
- b. Employers Liability - \$100,000.
- c. Commercial General Liability - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.

35. DRUG-FREE WORKPLACE

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or

advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, “drug-free workplace” means a site for the performance of work done in connection with a specific Contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.

36. NONDISCRIMINATION OF CONTRACTORS

A bidder, offeror, or Contractor shall not be discriminated against in the solicitation or award of this Contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this Contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this Contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

37. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION

The eVA Internet electronic procurement solution, web site portal <http://www.eva.state.va.us>, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service, and complete the Ariba Commerce Services Network registration.

Vendors are strongly encouraged to register prior to submitting a bid or offer. Failure to register will result in the bid being found non-responsive and rejected. All vendors must register in both the eVA and the Ariba Commerce Services Network Vendor Registration Systems.

a. eVA Basic Vendor Registration Service: \$25 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, and electronic bidding, as they become available.

b. eVA Premium Vendor Registration Service: \$200 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments, and ability to research historical procurement data, as they become available.

c. Ariba Commerce Services Network Registration. The Ariba Commerce Services Network (ACSN) registration is required and provides the tool used to transmit information electronically between state agencies and vendors. There is no additional fee for this service.

eVA BUSINESS-TO-GOVERNMENT CONTRACTS

The eVA Internet electronic procurement solution, web site portal www.eva.state.va.us, streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Failure to comply with the requirements in a. and b. below will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

a. Submit a fully executed American Management Systems, Inc., (AMS) Trading Partner Agreement, a copy of which can be accessed and downloaded from <http://www.eva.state.va.us>. AMS is the Commonwealth's service provider to implement and host the eVA e-procurement solution.

b. Provide an electronic catalog (price list) for items awarded under a term contract. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from <http://www.eva.state.va.us>.

38. BREACH

Contractor shall be deemed in breach of this Agreement if the Contractor (a) fails to make any Product or Service ready for acceptance testing by the specified delivery date; (b) repeatedly fails to respond to requests for maintenance or other required service within the time limits set forth in this Agreement; (c) fails to comply with any other term of this Agreement and fails to cure such noncompliance within ten days (or such greater period as is acceptable to the Commonwealth) following Contractor's receipt of a Show Cause Notice identifying such noncompliance; or (d) fails to provide a written response to the Commonwealth's Show Cause Notice within ten days after receiving same.

Contractor shall not be in breach of this Agreement if its default was due to causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Products or Services. All costs for de-installation and return of Products shall be borne by the Contractor. In no event shall

any failure by the Commonwealth to exercise any remedy available to it be construed as a waiver of or consent to any breach.

39. NON-APPROPRIATION

All funds for payment of equipment, software or services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of non-appropriation of funds by the Legislature for the items under this Contract, the Commonwealth will terminate this Contract for those goods or services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, the Commonwealth may terminate this Contract for goods or services dependent on such federal funds without further obligation.

40. CONTRACTUAL RECORDS

The Contractor shall make all Contractual books and records and other documents relating to matters under this Agreement available to the Commonwealth and its designated agents for purposes of audit and examination for a period of five years after final payment.

Contractual records include, but are not limited to, this Agreement and all executed Orders, Attachments, modifications, invoices, and correspondence between the parties to this Agreement.

41. TERMINATION FOR CONVENIENCE

The Commonwealth may terminate this Contract in whole or in part, for Convenience at any time by submitting to the Contractor, a writing, thirty (30) days prior to the date of termination. The Commonwealth and any Authorized User shall be obligated for all outstanding Orders, as per Contract, subsequent to this termination.

Payment will be made by the Commonwealth or Authorized User to the Contractor for Services provided as of the effective cancellation date. After receipt of a notice of termination, the contractor shall stop all work or deliveries under the Order or Contract on the effective date, and to the extent, specified in said Notice. The Commonwealth or any Authorized User shall not be obligated for any other costs or obligations in the event of Termination for Convenience.

42. TERMINATION FOR CONVENIENCE OF INDIVIDUAL ORDER

Any individual Order placed under this Agreement may be terminated, in whole or in part, by the Commonwealth for its convenience, at any time up to thirty (30) days advance written notice to the Contractor. There are no other costs or obligations for termination for convenience.

43. PRIME CONTRACTOR RESPONSIBILITY

If Contractor's proposal includes any products or services to be supplied by another party, then Contractor agrees as follows:

a. Contractor shall act as prime Contractor for the procurement and maintenance of the entire proposed configuration and shall be the sole point of contact with regard to all obligations under this Agreement.

b. Contractor hereby represents and warrants that Contractor has made such other party aware of the proposed use and disposition of the other party's product or services, and that such other party has agreed in writing that it has no objection thereto.

44. PATENT/COPYRIGHT PROTECTION

Contractor, at its own expense, shall defend any suit brought against the Commonwealth for the infringement of patents, copyrights or trade secrets enforceable in the United States if the claim of infringement is alleged to relate to or arise from the Contractor's or Commonwealth's use of any equipment, software, materials or information prepared, developed or delivered in connection with performance of this Agreement. In such suit, Contractor shall indemnify the Commonwealth, its agents, officers and employees for any loss, liability or expense incurred as a result of such suit.

The purchasing agency shall notify the Contractor of such suit within a reasonable time after learning of it and shall give the Contractor the full right and opportunity to conduct the defense of the suit, subject however to the requirements of Section 2.2-510 and Section 2.2-514 of the Code of Virginia or any successor statute. If principles of governmental or public law are involved, the Commonwealth may, at its option and expense, participate in the defense of the suit.

The Contractor shall not be required to indemnify the Commonwealth for liability arising solely out of the Commonwealth's own specifications or design or solely from the combination of equipment or software furnished hereunder with any equipment or software not supplied by the Contractor.

If, any Product or Service becomes, or in the Contractor's opinion, is likely to become, the subject of a claim of infringement, Contractor may, at its option, provide noninfringing substitutes that are satisfactory to the Commonwealth, or at Contractor's option and expense, may obtain the right for the Commonwealth to continue the use of such Product or Service.

If the use of such equipment or software by the Commonwealth is prevented by permanent injunction or by Contractor's failure to procure the right for the Commonwealth to continue using the software, the Contractor agrees to take back the infringing equipment, software, materials or information and refund the total amount the Commonwealth has paid Contractor under this Agreement, less one half (1/2%) percent of the total paid for each month of use by the Commonwealth. This obligation is in addition to the obligations cited in the first four subparagraphs above of this section entitled paragraph *Patent/Copyright Protection*.

45. CONTRACTUAL DISPUTES

In accordance with Section 2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the VITA no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to VITA at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. VITA shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

Contractor agrees to submit any and all contractual disputes arising from this contract to VITA's alternative dispute resolution procedures. Contractor may invoke VITA's alternative dispute resolution procedures at any time and concurrently with any other statutory remedies prescribed by the Code of Virginia.

(ADR Procedures - <http://www.vita.virginia.gov/integration/adrProceduresForDisputes.cfm>)

In the event of any breach by the Commonwealth, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this Section. In no event shall Contractor's remedies include the right to terminate any license or support services hereunder.

46. LIMITATION OF LIABILITY

To the maximum extent permitted by applicable law, the Contractor will not be liable under this Agreement for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and/or services delivered under this Agreement. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the Contractor; or (c) circumstances where the Agreement expressly provides a right to damages, indemnification or reimbursement.

47. PRICE PROTECTION/ADJUSTMENTS

The Commonwealth shall not pay any costs above those specified in this Agreement or set forth on any Order or Attachment referencing this Agreement. If within twelve (12) months following the acceptance of any Product or Service, the list price of the Product or Service is reduced below the price paid hereunder, then the difference shall be refunded to the Commonwealth or Authorized User. Such refund shall be made to the Commonwealth or Authorized User within thirty (30) days from the date the decrease is announced to the general public. In addition, written notification of the decrease will be provided to VITA at the address

identified herein. In no event may the amount of any Contract, without adequate consideration, be increased for any purpose.

Any price decrease effectuated during the Contract period by reason of market change shall be passed on to the Commonwealth of Virginia. This decrease will be effective on the date the price decrease is announced to the general public.

The Commonwealth, in its sole option, may permit price adjustments, for requested changes in the Contractor's cost of Services using the Consumer Price Index/W (CPI-W) Table 4, Services/"Other Services" category as a guide, as found on website <http://STATS.BLS.GOV/NEWS.RELEASE/CPI.T04.HTM>.

Once the website is accessed, refer to the section titled COMMODITY AND SERVICE GROUP, within this group, refer to the lines titled SERVICES and OTHER SERVICES and read the figures in the fourth column for the current CPI rate.

No price increase is authorized until twelve (12) months after the effective date of this Contract, or the effective date for any subsequent renewal thereafter, or the effective date of any Order referencing this Contract. Price increases allowed shall not be retroactive and shall only apply to new statements of work (SOW) or change orders impacting an existing SOW, upon approval of VITA.

Contractor shall give not less than thirty (30) days advance written notice of any price increase to VITA. Any approved price changes will be effective only at the beginning of the calendar month following the end of the full 30 day notification period. The Contractor shall document the amount and the proposed effective date of any general change in the price of Services. Documentation shall be supplied with the Contractor's request for increase which will: 1) verify that the requested price increase is general in scope and not applicable just to the Commonwealth; and (2) verify the amount of percentage of increase which is being passed on to or by the Contractor and why the percentage of increase is necessary to supply services to the Authorized User. The Contractor is further advised that decreases which affect the cost of Services are required to be communicated and effective immediately to the Authorized User.

48. CREDITS

Any credits due the State under the terms of this Contract may be applied against Contractor's invoices with appropriate information attached.

49. FINAL ACTUAL INVOLVEMENT REPORT

The Contractor will submit, prior to completion or at completion of the Contract and subject to final payment, a report on the actual dollars spent with small businesses and businesses owned by women and minorities during the performance of the Contract. At a minimum, this report shall include for each firm Contracted with and for each such business class (i.e., small, minority-owned, women-owned) the total actual dollars spent on this Contract, the planned involvement of the firm and business class as specified in the proposal, and the actual percent of the total estimated Contract value. A suggested format is as follows:

FIRM NAME ADDRESS AND PHONE NUMBER	TYPE GOODS/ SERVICES	ACTUAL DOLLARS	PLANNED DOLLARS	% OF TOTAL CONTRACT
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Totals for Business Class		_____	_____	_____

50. BUY OUTS - THIRD PARTY ACQUISITION OF CONTRACTOR'S SOFTWARE

Contractor shall promptly notify the Contracts Manager, SCM in the event that the intellectual property in or business associated with any Product or Service covered by this Agreement is acquired from the Contractor by a third party or in the event the Contractor or substantially all of its assets is acquired by a third party.

The terms and conditions of this Agreement including but not limited to the license rights and related services shall not be affected in such event identified above even if the successor or assignee already has an agreement with the Commonwealth covering products and services of the type covered by this Agreement. The Contractor's responsibilities under this Agreement shall not be released by such acquisition. In addition, prior to any acquisition, Contractor shall obtain for the Commonwealth's benefit the assignee's agreement to fully perform this Agreement.

The successor or assignee, by taking any benefit, including acceptance of payment, under this Agreement ratifies this Agreement.

The failure of any successor or assignee of the Contractor to acknowledge its obligation to adhere to the terms and conditions of this Agreement shall constitute a breach of this Agreement for which the successor or assignee and the original Contractor shall be liable and subject to debarment.

51. LICENSED SOFTWARE

Contractor represents and warrants that it is the sole owner of the software Product or, if not the owner, has received all proper authorizations from the owner to license the software Product, and has the full right and power to grant the rights contained in this Contract. Contractor further warrants and represents that the software Product is of original development, and that the package and its use will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person.

52. TERM OF LICENSE

All licenses granted under this Agreement are purchased on a non-exclusive, irrevocable perpetual license basis and shall commence upon the acceptance of the software Product by the Commonwealth. Notwithstanding the foregoing, the Commonwealth may terminate the license at anytime. All licenses granted to the Commonwealth are for the use of the software

Product at the Commonwealth's computing facilities at the sites identified in any executed Attachment or Order referencing this Agreement. This license is perpetual and in no event shall Contractor's remedies for any breach of this Agreement include the right to terminate any license or support services hereunder.

53. CONFIDENTIALITY

Commonwealth agrees that when the software Product is proprietary to Contractor and has been developed or acquired at Contractor's expense, that it shall hold and use the software Product in the same manner as it would deal with its own confidential information. Commonwealth shall not knowingly divulge, nor knowingly permit any of its employees, agents, or representatives to divulge, any proprietary information with respect to the software Product, the technology embodied therein, or any other documentation, models, descriptions, forms, instructions or other proprietary information relating thereto, except as specifically authorized by Contractor, in writing, or as may be required by the laws of the Commonwealth of Virginia.

Commonwealth shall take all reasonable steps necessary or appropriate to insure compliance with this Section by the Commonwealth's employees, agents and representatives, including copying reproducible legends and markings on all physical components of the software Product.

The Commonwealth's obligation under this Section entitled Confidentiality shall terminate three years after the Commonwealth ceases using the Software Product containing the proprietary information.

54. SOFTWARE UPGRADES

The Commonwealth shall be entitled to receive any and all upgraded versions of the Software that Contractor may make available in the future including any third party Software provided by the Contractor under this Agreement. The maximum charge to the Commonwealth shall not exceed the difference between the price which the Commonwealth paid for the present version, and the lowest price at which the Contractor has sold or licensed the upgraded version.

55. DISPOSITION OF SOFTWARE

Unless otherwise instructed by the Contractor, the Commonwealth or any Authorized User shall erase, destroy or otherwise render unusable the Software Product within thirty (30) days from the date of the Commonwealth's or Authorized User's termination of the license. A letter certifying this destruction shall be sent to the Contractor as soon as this process is completed. The Commonwealth or Authorized User shall have the right to retain one copy for archival purposes.

56. COMMONWEALTH'S RIGHTS TO COMPUTER SOFTWARE

Notwithstanding anything to the contrary in this Agreement, the Commonwealth shall have:

- a. Unlimited use of the Software Products on the machines for which it is acquired and on any replacement equipment;

b. Use of such Software Products with a backup system if the system(s) for which it was acquired is for any reason, inoperative or during an emergency, or the performance of engineering changes in features or model;

c. The right to use such Software Products at any Commonwealth installation to which the machine(s) may be transferred by the Commonwealth;

d. The right to copy such software for safekeeping or backup purposes;

e. The right to combine such Software Product with other programs or material at the Commonwealth's risk; however, no system other than systems developed by Contractor are allowed to write into the Licensed Product Database.

f. The right to modify such software Product that Contractor discontinues software support and maintenance or such that the Contractor does not provide support and or maintenance and does not provide a replacement product for; in no event shall the Commonwealth have the right to de-compile or reverse engineer any Software Product

g. The Commonwealth shall have the right to reproduce any and all physical documentation supplied under the terms of this Agreement, provided, however, that such reproduction shall be for the sole use of the Commonwealth and shall be subject to the same restrictions or use and disclosure as are contained elsewhere in this Agreement.

Nothing contained herein shall be construed to restrict or limit the Commonwealth's rights to use any technical data which the Commonwealth may already possess or acquire under proper authorization from other sources.

57. WARRANTY

Contractor warrants that Software Products and Services deliverables shall comply with the Contractor's user documentation, descriptions and representations as to performance capabilities, completeness, specifications, configurations, function and any other specific criteria as set forth herein, or that appear in any Statement of Work, attached hereto and incorporated herein as Attachment B, agreed upon between the Contractor and an Authorized User. This Warranty is valid for a period of ninety (90) days and shall commence upon Acceptance of the Software Product by the Authorized User, or upon the delivery of any Service delineated herein. This Warranty does not apply to components of Software which an Authorized User is permitted to redistribute under applicable product use rights, or if failure of unit of Software has resulted from accident, abuse or misapplication by the Commonwealth or any Authorized User. If the Authorized User notifies Contractor within the Warranty period that a unit of Software does not meet this Warranty, then Contractor will, at its option, either (i) return the price paid for such unit of Software or (ii) repair or replace the Software, at Contractor's expense, within five (5) business days following notification. This is the Authorized User's exclusive remedy for any failure of any unit of Software to function as described in this paragraph.

Warranty/Maintenance service shall include, but not necessarily be limited to, detection and correction or errors, updating of all Software Products to operate with updated or revised versions of the operating systems for which the Software Product is licensed, and provision of enhancements to the Software Product as they are generally made available. Warranty/Maintenance charges shall include such telephonic support as is necessary to maintain any Product in accordance with the Contractor's published specifications. Contractor shall respond telephonically to all requests for service within two (2) hours after receipt of notification that a failure has occurred. The Principal Period of Maintenance (PPM) shall be Monday through Friday, between 8:00 AM and 5:00 PM Eastern, excluding the Commonwealth's holidays.

To the maximum extent permitted by applicable law, contractor and its licensors and suppliers disclaim all other warranties of any kind, whether express or implied, including but not limited to merchantability, and fitness for a particular purpose, with respect to the Software and documentation.

58. MAINTENANCE AND SOFTWARE SUPPORT

When requested by an Authorized User, the Contractor shall always be responsive to maintenance requirements of the Authorized User. Maintenance shall include, but not necessarily be limited to, detection and correction of errors, updating of all Software Products to operate with all updated or revised versions of the operating systems for which the Software Product is licensed, and provision of enhancements to the Software Product as they are generally made available. The Commonwealth, an any Authorized User, shall have the sole option of purchasing, at later dates, additional one (1) year periods of software maintenance support renewal following the expiration of the initial Warranty period. All increases will be governed by the CPI-W index entitled "Other Services", as delineated herein under the section entitled "Price Protection/Adjustments". The percentage increase shall not exceed the above index's most recent percentage available to the Commonwealth as published by the Bureau of Labor Statistic's, Philadelphia Office. If maintenance prices remain the same or decrease for succeeding year, the State shall be afforded the opportunity to renew the maintenance services at the lowest price available to any other customer. The ability to increase maintenance fees by the allowable amount shall not begin until completion of the second year of warranty/maintenance and support services.

59. OPERATIONAL RESTRICTIONS

Contractor warrants that, except as specifically agreed to in writing, all Software Products may be operated at any time for the convenience of the Commonwealth and that there are no restrictions as to the consecutive hours of Product operation.

60. CONTRACTOR ACCESS TO COMMONWEALTH LOCATION/S

Commonwealth shall grant to Contractor personnel such access to the Commonwealth location as may be necessary or appropriate for Contractor to perform its obligations under this Agreement, subject to all security issues. For any individual Commonwealth location, the Contractor may be required to undergo additional security procedures that may include but not be limited to; records verification, submission of photos and or fingerprints, etc. The Contractor may at any time, for any Commonwealth location, be required to undertake the

execution and completion for each individual employee, the requirement of the submission of additional forms that the Commonwealth would consider reasonable for security measures. These forms may include the individual employee's agreement that all Commonwealth information that is garnered while at the Commonwealth site is confidential and proprietary. Any unauthorized release of proprietary information by the Contractor or Contractor's employees shall constitute a breach of this Agreement.

61. MOVEMENT OF PRODUCT(S)

Any product may be moved from one Commonwealth location to another upon thirty (30) days written notice to the Contractor. Prior written notice shall not be required in the event of an emergency. Contractor shall continue to warrant/maintain Software as stipulated herein.

There shall be no relocation charge to the Commonwealth in the event of transfer of licensed Software Product(s) to another location, and the licensed Software Product(s) is to be discontinued at the old location(s).

62. CORRECTION OF ERRORS

In the event Contractor cannot correct errors in the then-current, unaltered version (including updates) of the Software Products to keep such products in specified operating condition by responsive service, the Contractor shall replace the Product or provide a "work around" within ten (10) calendar days after notification that a software correction is required. In the event Contractor does not keep the Software Product(s) in specified operating condition in accordance with this Agreement, then the Commonwealth, at its sole option, shall have the right to return any or all of the software and related technical data and Contractor shall refund the total fees paid less a pro rata amount based on a sixty (60) month period from the date of acceptance.

63. SOURCE CODE

Contractor has deposited a copy of the source code of the Software with DSI Technology Escrow Services, Inc., ATTN: Client Services, 2100 Norcross Parkway, Suite 150, Norcross, GA 30071. Such source code will be updated with each new release of the Software which will also be deposited with the escrow agent. Such copies of the source code will be held in escrow and in the event of a final adjudication of Contractor as bankrupt, the Commonwealth will, at no charge, be entitled to obtain a copy of such source code from the escrow agent. The Commonwealth will, however, only use such copy of the source code internally to support the Software. The escrow agent's only responsibility will be to use its good faith efforts to cause a copy of the source code, in the form as delivered by Contractor, to be delivered to the Commonwealth at the appropriate time.

In the event that Contractor shall have ceased providing maintenance services to licensees of the Software during a period in which the Commonwealth shall be entitled to receive such maintenance services, Contractor shall, upon the written request of the Commonwealth and at no charge, deliver or cause to be delivered to the Commonwealth a copy of the source code of the Software. Such copy shall in all respects be subject to all the terms and conditions of the Agreement. The Commonwealth will, however, only use such copy of the source code internally to support the Software. If Contractor shall recommence providing; maintenance

service to its licensees, the Commonwealth shall not be obligated to return such copy of the source code to the Contractor. In the event that the Commonwealth does not return such copy of the source code, Contractor shall not be obligated to provide the Commonwealth with maintenance services with respect to the Software.

64. WARRANTY AGAINST SHUTDOWN DEVICES

Contractor warrants that the Products provided under this Agreement shall not contain any lock, counter, CPU reference, virus, worm or other device capable of halting operations or erasing or altering data or programs. Contractor further warrants that neither the Contractor, nor its agents, employees or subcontractors shall insert any such device after execution of this Agreement.

65. DISASTER RECOVERY

By executing this Agreement, Contractor hereby authorizes the Commonwealth to operate Contractor's licensed software products identified in this Agreement at other location(s) for purposes of disaster recovery and disaster recovery testing. In addition, Contractor recognizes that to prepare for such an event the Commonwealth must test the Contractor's software product (normally for a period of two to three days, twice annually) at a disaster recovery vendor's Cold Site. The use of Contractor's software products by the Commonwealth, at such times and under such events will be in accordance with the terms and conditions of this Agreement. Contractor agrees that there shall be no additional charge to the Commonwealth when Contractor's software products are used during an actual disaster or for disaster recovery testing.

66. NONVISUAL ACCESS TO TECHNOLOGY AND SECTION 508 REHABILITATION ACT

All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following non-visual access standards from the date of purchase or upgrade until the expiration of this Agreement:

- a. Effective, interactive control and use of the Technology shall be readily achievable by non-visual means;
- b. The Technology equipped for non-visual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;
- c. Nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public; and
- d. The technology for non-visual access shall have the capability of providing equivalent access by non-visual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing non-visual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (i) the Technology is not available with non-visual access because the essential elements of the Technology are visual and (ii) non-visual equivalence is not available.

Installation of hardware, software, or peripheral devices used for non-visual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of non-visual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing non-visual access standards is achieved and a validation of concept demonstration.

All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any Commonwealth agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with Section 508 of the Rehabilitation Act (29 U.S.C. 794d), as amended. If requested, the Contractor must provide a detailed explanation of how compliance with Section 508 of the Rehabilitation Act is achieved and a validation of concept demonstration. (<http://www.section508.gov/>)

The requirements of this Paragraph along with the Non-Visual Access to Technology Clause shall be construed to achieve full compliance with the Information Technology Access Act, §§2.2-3500 through 2.2-3504 of the Code of Virginia.

67. CREATION OF INTELLECTUAL PROPERTY

All copyrightable material created pursuant to this Agreement shall be considered work made for hire and shall belong exclusively to the Commonwealth. If the whole or any part of such copyrightable material cannot be deemed work made for hire, the Contractor agrees to assign, and does hereby irrevocably assign, the copyright thereto to the Commonwealth, and shall execute and deliver such further documents as the Commonwealth may reasonably request for the purposes of acknowledging or implementing such assignment.

The Contractor warrants that no individual, other than regular employees of the Contractor or Commonwealth working within the scope of their employment, shall participate in the creation of any copyrightable material to be delivered under this Agreement, unless such individual and his or her employer, if any, have signed an intellectual property agreement satisfactory to the Commonwealth.

The Commonwealth shall have all rights, title and interest in or to any invention reduced to practice through the performance of this Agreement.

The Contractor hereby agrees that, notwithstanding anything else in this Agreement, in the event of any breach of this Agreement by the Commonwealth, the Contractor's remedy shall not include any right to rescind, or otherwise revoke or invalidate, the provisions of this Section. Similarly, no termination of the Agreement by the Commonwealth shall have the effect of rescinding the provisions of this Section.

68. CONTRACTOR'S MAINTENANCE POINT-OF-CONTACT

Contractor shall provide the Commonwealth with designated points-of-contact and make arrangements to enable its maintenance representative to receive such notification or other continuous telephone coverage to permit the Commonwealth to make such contact.

69. TRAINING

The Contractor shall train an adequate number of operating personnel to support the Commonwealth's use of the Products. Such training will be at a mutual agreeable Commonwealth location.

70. MANUALS

Contractor shall supply an operations manual for each Product, and in the case of custom-developed deliverables, shall also provide a manual describing the functions, characteristics and operating capabilities that may be expected of such deliverables. Manuals may be in either hard or soft versions.

PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.

SYSTEM AUTOMATION CORPORATION

BY: _____

NAME: _____

TITLE: _____

DATE: _____

Art H...
Sol H...

DIR. OF CONTRACTS

10/05/04

COMMONWEALTH OF VIRGINIA

BY: _____

NAME: _____

TITLE: _____

DATE: _____

[Signature]

Cheryl Clark

Deputy CIO

10/05/04

FOR INTERNAL COMMONWEALTH ACTION REVIEW AND APPROVAL ONLY:

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF MEDICAL
ASSISTANCE SERVICES (DMAS)

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF PROFESSIONAL
OCCUPATIONAL REGULATION (DPOR)

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF EDUCATION (DOE)

BY: _____

NAME: _____

TITLE: _____

DATE: _____

ATTACHMENT "A"
TO
AGREEMENT VA-040901-SA
BETWEEN
THE COMMONWEALTH OF VIRGINIA
AND
SYSTEM AUTOMATION CORPORATION

PRICING AND CONTRACT USAGE INSTRUCTIONS

Attachment "A" is hereby incorporated into and made an integral part of Agreement # VA-040901-SA between SYSTEM AUTOMATION CORPORATION and the Commonwealth of Virginia.

In the event of any discrepancy between this Attachment "A" and Contract VA-040901-SA, the provisions of Contract VA-040901-SA shall control.

1. LISTING OF PRODUCTS SERVICES, PRICING AND USAGE INSTRUCTIONS

The scope of Licensee shall include all state agencies, institutions, cities, towns, counties or any other public body, as defined in Section 2.2-4301 entitled *Definitions* and Section 2.2-4304 of the Virginia Public Procurement Act (VPPA).

A. Rates:

- 1) **Software Products**: Contractor shall provide a discount to the Commonwealth for Software Products as follows:

Software Product	List Price	Contract Price
License 2000®	Commonwealth-Owned	\$0
License 2000® Integrated Imaging Module	Commonwealth-Owned	\$0
Upgrade MyLicense®	\$100,000	\$49,000
mCheck™	\$100,000	\$25,000
Database Preference: <ul style="list-style-type: none">• MS SQL• Oracle• MySQL	Not Applicable	Not Applicable
User Fees	No Charge	No Charge

Total Software License Fees \$74,000

2) **Annual Maintenance & Software Support Services:**

- a. Contractor shall provide annual Maintenance and Software support Services at the following Annual Fees:

Description	Annual Fee
Enterprise/Statewide Agreement (All Products – 8 Technical Contacts)	\$230,000
Additional Technical Contacts	\$2,000

- b. Maintenance and Software support Services for each Authorized User shall be prorated based upon the number of active licenses in all implementations within the Commonwealth, by all Authorized Users. The intent is reduce each individual authorized user's annual software maintenance and support cost, as the actual number of Authorized User's under this Agreement increases, as calculated per Authorized User in accordance with the following example:

Authorized User	Estimated # of Users	% of Total Licenses	Prorated Portion of Annual S/W Maintenance
VA Dept. of Health Professions (VDHP)	400,000	55%	\$126,500
VA Dept. of Professional Occupational Regulation (DPOR)	300,000	41%	\$94,300
VA Dept of Education (VDOE)	32,000	4%	\$9,200
TOTAL	732,000	100%	\$230,000

- c. If Software maintenance and support services are purchased by an Authorized User, Contractor will provide the level of support for the Software set forth in accordance with the prevailing Contractor software maintenance agreement available online at <http://www.systemautomation.com> describing available support options and procedures. This agreement may be amended from time to time by Contractor.

- 3) **Additional Services:** Contractor shall provide a 15-30% discount* off of the publisher's publicly available price list to "Authorized Users" for Services at the following Hourly Rates:

Service	List Price Hourly Rates	Contract Hourly Rates*
Project Manager	\$ 160	\$ 140

Senior Implementation Specialist	\$ 140	\$ 110
Implementation Specialist	\$ 120	\$ 85
Senior Database Administrator	\$ 150	\$ 115
Network Engineer	\$ 125	\$ 95
Application Developer	\$ 145	\$ 120

* These Hourly Rates represent ceiling prices only. Further discounts may be negotiated based upon the scope of an individual project.

Additional Services include:

- Software license enhancements (“Licensed Enhancements”) offered for an additional license fee at a 50% discount from the publisher’s publicly available price list at: <http://www.systemautomation.com>
- Custom programming services
- On-site tech support (excluding installation of delivered Software Product)
- Training
- Diagnosis, repair, or replacement of the Software Product components that have been improperly altered or affected by any action of the Commonwealth, its employees, contractors or other authorized agents
- Technical support services for the “platform” upon which Software Products reside; including workstations, servers, and Local Area Networks (LANS)
- Database maintenance. Additional services may include corrections to databases, or providing database update utilities to be executed by the Commonwealth’s support staff, contractors, or other authorized agents, when database corrections are warranted

B. **Price Changes** – Are permitted only in accordance with Contract section 49, herein, entitled “*PRICE PROTECTION/ADJUSTMENTS*”.

C. **Travel** – From time to time, Contractor staff may be required to work weekends or to travel to locations other than their primary work place, **which shall be defined in the SOW**. In such cases, the Authorized User and Contractor may negotiate travel expenses for individuals up to the limits established by the Department of Accounts in the Commonwealth’s State Travel Regulations as posted on the Department of Account website: <http://www.doa.state.va.us/procedures/adminservices/capp/capp1.htm>. Any invoice for travel shall not exceed the Commonwealth’s reimbursement rates for mileage, meals, lodging and incidental travel expenses, and shall not exceed 10% of any total “Order” cost. TRAVEL SHALL BE COUNTED AS NORMAL TIME NOT TO EXCEED EIGHT (8) HOURS PER DAY REGARDLESS OF THE ACTUAL TIME REQUIRED. The Contractor shall not charge VITA for travel, lodging and meal expenses to relocate information technology consultants proposed by the Contractor to the workplace specified in the SOW. No overtime payment shall be allowed for hourly individuals only straight hourly rate will be paid. Authorized Users and Contractor may negotiate payment of travel expenses for out-of-state individuals, if specifically

requested by the Authorized User, and within the Commonwealth's Travel reimbursement rates.

D. CONTRACT USAGE

- 1) Contractor staff shall not be permitted to commence work on any project until a written eVA Direct Order (DO) has been approved by VITA with an attached Statement of Work from the Authorized User. Any work performed by Contractor or Contractor's personnel prior to the effective date of stated in any DO with Statement of Work shall not be billed and/or accepted by the Commonwealth.
- 2) The Commonwealth will provide proper working facilities and consumable supplies commensurate with any task(s) to be performed.
- 3) The Commonwealth will provide access to project documentation as well as familiarization briefings on requirements.
- 4) The Commonwealth will provide access to any technical manuals and references required during the normal performance of duties.
- 5) Contractor personnel shall be expected to follow established directives and policies during the performance of assigned tasks.

E. ORDERS – VITA shall approve Orders issued through eVA and as delineated herein under section 17 entitled “Orders”, and processed as follows:

- 1) The Authorized User will first provide a Statement of Work (“SOW”) to the Contractor for completion
- 2) Contractor will acknowledge receipt of SOW to the Authorized User within two (2) calendar days and provide the Authorized User with a total cost for all Products within seven (7) calendar days after receipt of a SOW
- 3) Following the receipt of a completed SOW from Contractor, the Authorized User will send VITA an eVA requisition (<http://www.eva.state.va.us>), and attach the SOW
- 4) VITA will review the eVA requisition and attached SOW for approval
- 5) Following review and approval, VITA will process the eVA requisition and issue an eVA Direct Order (“DO”) to the Contractor with the attached SOW.
- 6) Upon receipt of a valid DO issued by VITA, Contractor shall process the DO and return a confirmation Receipt to identify and verify that:
 - a. The received Order was received, is technically correct, accurate, and complete, with SOW attached, and identifying the Product to be acquired, price, and Required Delivery Date (“RDD”) for each Product.
 - b. Contractor may request clarification and/or a change to the RDD should product availability or delivery be an issue, and any other applicable administrative or technical information necessary to deliver the Product(s) requested on the Order by the RDD.
- 7) To be valid, any eVA DO must cite this Agreement #VA-040901-SA, and be approved by an Ordering Officer authorized by VITA to place Orders binding the Commonwealth contractually under this Agreement, as delineated herein under the section entitled “ORDERING OFFICERS”.

- 8) Contractor shall request a clarification for any DO that is not complete, clear or fully understood.

VITA's intent is to use eVA, the Commonwealth of Virginia's total e-procurement internet portal solution (<http://www.eVA.state.va.us>) as the sole ordering method; which may be transmitted via email, fax, or any other delivery means.

- F. **ACTIVATION OF ORDERS** – Upon receipt of a valid DO through eVA or any other authorized ordering process, Contractor shall commence work to install all Software and/or deliver Services as stipulated in the DO.

2. SHIP TO / BILL TO ADDRESSES

Authorized Users shall include shipping and billing addresses on individual SOWs referencing this Contract. VITA shall include this information and provide to Contractor in the eVA DO.

3. DELIVERY SCHEDULE

The delivery schedule for all Products shall be specified in any executed Attachment or Order referencing the Agreement, or within thirty (30) days After Receipt of Order (ARO) if no date is specified. If delivery of all Services is not completed within the time specified, then the Commonwealth may cancel the individual DO without further obligation.

4. VITA POINTS OF CONTACT

Contract Administration/Compliance

Tim Moore, VCO
Contracts Manager, SCM
Virginia Information Technologies Agency
Supply Chain Management Directorate
110 South 7th Street, East Lobby
Richmond, VA 23219-3931
Tel: 804-371-5900
Fax: 804-371-5969
tim.moore@vita.virginia.gov
<http://www.asd.virginia.gov>

Contract Information

Robert E. Gleason, VCO
Supply Chain Management Directorate
Virginia Information Technologies Agency
110 South 7th Street, East Lobby
Richmond, VA 23219-3931
Tel: 804-371-5923
Fax: 804-371-5969
robert.gleason@vita.virginia.gov
<http://www.asd.virginia.gov>

5. CONTRACTOR POINTS-OF-CONTACT

Contract Information

SYSTEM AUTOMATION CORPORATION
ATTN: Sol Horwitz, Director of Contracts
4041 Powder Mill Road, Suite 502
Calverton, MD 20705
Tel. 301-837-8000 x 237

Technical Support Assistance

SYSTEM AUTOMATION CORPORATION
ATTN: Customer Service
4041 Powder Mill Road, Suite 502
Calverton, MD 20705
Tel. 301-837-8000 x ____

Fax. 301-837-8001
email: shorwitz@systemautomation.com
web: <http://www.systemautomation.com>

Toll-Free: 800-839-4729 x 258
Fax. 301-837-8001
email: helpdesk@license2000.com
web: <http://www.systemautomation.com>

ATTACHMENT "B"
TO
AGREEMENT VA-040901-SA
BETWEEN
THE COMMONWEALTH OF VIRGINIA
AND
SYSTEM AUTOMATION CORPORATION

SAMPLE STATEMENT OF WORK (SOW)

Attachment "B" is hereby incorporated into and made an integral part of Agreement # VA-040901-SA between SYSTEM AUTOMATION CORPORATION and the Commonwealth of Virginia.

In the event of any discrepancy between this Attachment "B" and Contract VA-040901-SA, the provisions of Contract VA-040901-SA shall control.

A completed SOW from the Contractor to the requesting Authorized User is required to accompany any Request from an Authorized User for VITA to process a Contract Order.

1. Effective Date of this SOW: *This SOW is effective as of <<Insert Date>>*
2. Authorized User (Agency/Institution/Local Entity): *<<Insert name of Commonwealth public body>>*
3. Authorized User Contact Info: *<<Insert all address and other contact information of the public body>>*
4. Ship To/Bill To Addresses: *<<Insert relevant information to appear on the eVA Order to correctly bill information. All shipments should be to the VITA HQ location>>*
5. Project Description: *<<Insert a name and description for project, goals, etc.>>*
6. Scope of Work:
 - a. Number of licenses by type:
 - b. Services required:
 - c. License Document templates needed:
 - d. Custom report needs (other than packaged reports):
 - e. Data conversion requirements:
 - f. Training Plan and number & type of users:
7. Timelines:
8. Deliverables:

- 9. Project Milestones (if applicable):
- 10. Acceptance and Testing Criteria:
- 11. Controls and Guidelines:
- 12. Scheduled Work Hours:
- 13. Travel Required / Primary Work Place:
- 14. Cost of Software/Services:
- 15. Other:
- 16. Background Info of the Authorized User (systems, equipment, etc):
- 17. Facility, equipment, etc., to be provided by Authorized User:

COORDINATED BY:

System Automation Corporation

<<Insert name of public body>>

BY: _____

BY: _____

NAME: _____

NAME: _____

TITLE: _____

TITLE: _____

DATE: _____

DATE: _____

ATTACHMENT "C"
TO
AGREEMENT VA-040901-SA
BETWEEN
THE COMMONWEALTH OF VIRGINIA
AND
SYSTEM AUTOMATION CORPORATION

Performance Incentive for Delivery of 3-Tier Software Version

Attachment "C" is hereby incorporated into and made an integral part of Agreement # VA-040901-SA between SYSTEM AUTOMATION CORPORATION and the Commonwealth of Virginia.

In the event of any discrepancy between this Attachment "A" and Contract VA-040901-SA, the provisions of Contract VA-040901-SA shall control.

Delivery of 3-Tiered Software Version

As part of Agreement VA-040901-SA between the Commonwealth of Virginia and System Automation (SA), SA has agreed to provide a fully operational, 3-tier version of the software. The target date for delivery of this version is June 30, 2006. For each month (or part of the month) beyond December 30, 2006 that the 3-tiered version of the software is not delivered System Automation will waive the statewide fee for software maintenance and support. Upon delivery of the new software version the prorated software maintenance and support fees would apply.

The waiving of fees will be applied based on the following example:

Annual Software Maintenance & Support Fee	\$230,000
Date 3-Tiered Version Delivered	April 10 th , 2007
# of Months Past December 30 th 2006	4
Maintenance & Support Fee for January 2006 – April 2006	\$0
Maintenance & Support Fee for May 2006 – December 2006	\$153,333